

June 20, 1955.

William H. Messeck, Jr.  
State Forester  
Forestry Division  
State House Annex  
Concord, N. H.

NEW HAMPSHIRE LAW LIBRARY

SEP 22 1998

CONCORD, N.H.

Dear Mr. Messeck:

In your letter of June 7, you have requested my opinion as to whether a permit to burn, issued by your office for the use of household or mill incinerators, relieves the permittee from responsibility for fires. This question is answered in the negative.

Under the provisions of Revised Laws, chapter 233, section 35-b, a permit must be obtained before fires may be kindled. The State Forester may make reasonable rules and regulations pertaining to the methods used in burning. However, under section 36, any person kindling a fire without a permit, and any person by whose negligence any fire shall be caused, is liable to the state for the costs of extinguishing such fires.

Negligence is a matter of fact to be determined by a jury. If a person has a permit, uses good equipment, obeys all rules and regulations issued by you pertaining to burning and still causes a fire, it would be next to impossible to get a jury verdict based on negligence. If, however, through the negligence of the owner a fire is started, he may not hide behind his permit.

Permits are to be issued in accordance with your "reasonable rules and regulations." I do not believe that you could withhold a permit because the permittee refuses to accept all responsibility. He is still chargeable only if you can show negligence.

Very truly yours,

Arthur E. Bean, Jr.  
Assistant Attorney General

AEB,jr/L